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Supreme Court, U.S.
FILED
APR 9 1997
OFFICE OF THE CLERK

No. 96-1388

In The

Supreme Court of the United States

October Term, 1996

I. PARKER HUFF,
Petitioner,

v.

FIRST NATIONAL BANK of CENTRE HALL,
Now Known as:
NORTHWEST SAVINGS BANK,
Respondant.

Petition For A Writ of Certiorari
To The Superior Court Of Pennsylvania

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Dated: April 9, 1997

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REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

The central issue presented to this Court is whether the Pennsylvania Appellate Court erred by not reversing the trial courts' judgement, where the trial court blatantly ignored the Permanent Injunction invoked by Discharge in Bankruptcy that totally prohibits creditors' Post-discharge inclusion of "unrelated discharged debts" in complaint to obtain judgement in mortgage foreclosure. While it is true the Bank's mortgage debt survives bankruptcy, the Bank is limited to the remedies of it's security agreement (B. 1b-3b) for collection and cannot go beyond that agreement to collect other discharged debts. This action not only opens the door to future attempts by over-zealous creditors to use "Creative Measures" to avoid the effect of discharge in bankruptcy and mask unlawful collection actions with lawful efforts; but, most importantly evidences the trial court's exercise of state laws and powers to violate the supreme law of the land and Congress's exclusive power to regulate Bankruptcy and directly conflicts with the Constitution and this Court's holdings in *KALB et ux. v. FEUERSTEIN et ux. KALB v.*

LUCE et al., 60 S.Ct. 343 at 346, *FMC Corp. v. Holliday*, 111 S.Ct. 403, 112 L.Ed.2d 356, appeal after remand 932 F.2d 959. and *Lamaster v. Keeler*, 123 US 376, 31 L Ed. 238, 8 S Ct. 197.

1. THE PETITION FOR WRIT OF CERTIORARI CONTAINS NO MISSTATEMENT OF FACTS

Contrary to the respondents claims, this petition seeks review of the state court judgement granted in violation of the "Permanent Injunction" arising from petitioner's prior discharge in bankruptcy, and NOT review of any bankruptcy court judgement. The relevant facts are stated as follows:

A. The bank obtained relief from the automatic stay on June 18, 1993 (B. 18b).

B. Petitioner obtained Discharge in bankruptcy on June 18, 1993 (B. 18b).

C. The bank filed Petition to Amend Judgement (including the unlawful claims that are the subject of this Petition for Writ) on August 5, 1993 (B. 4b-10b).

D. Petitioner answered Bank's petition and raised affirmative defense of

discharge in bankruptcy on September 13, 1993 (R.R. 65a-67a).

E. The trial Court granted judgement in favor of the Bank, including Bank's unlawful and void claims on September 17, 1993 (R.R. 68a).

F. Petitioner filed Petition to Strike Off Amended Judgement on October 4, 1993 (R.R. 69a-91a).

G. Trial Court denied Petition to Strike Off Amended Judgement on November 9, 1993 (R.R. 93a) with opinion at (R.R. 94a-95a).

H. The timely appeals to the Pennsylvania Superior and Supreme Courts followed.

Contrary to respondents contention, petitioner is "NOT" seeking review of any Bankruptcy Court Orders or Judgements.

2. THIS COURT PROPERLY HAS JURISDICTION OVER THIS PETITION PURSUANT TO 28 U.S.C. § 1257 AND SUPREME COURT RULE Number 10

The respondent is clearly confusing review of Bankruptcy court orders with the present issue of this petition, in that this petition for Writ of Certiorari is to

review the state court's exercise of control of local laws and powers to violate the constitutional power exclusively vested with Congress to regulate Bankruptcy,

> "State court's excuse for denial of federal right is not valid excuse if it is inconsistent with or violates federal law: supremacy clause forbids state courts to disassociate themselves from federal law because of disagreement with its contents or refusal to recognize superior authority of its source." U.S.C.A. Const. Art. 6, cl. 2. *Howlett By and Through Howlett v. Rose*, 110 S.Ct. 2430, 496 U.S. 356, 110 L.Ed.2d 332, on remand 571 So.2d 29.

and the supremacy of federal law that preempts the state court's jurisdiction and authority to grant the Judgement on review in this Petition.

> "Under supremacy clause, Bankruptcy Code and orders of bankruptcy court acting pursuant thereto controlled over otherwise valid state statutes, Supreme Court Rules, common-law principles, and state court

> orders involved in plaintiffs' attempts to enforce their state court judgments against trust subject to reorganization plan created pursuant to Bankruptcy Code, and thus, attempt by state Circuit Court to enforce judgments were void and could not support contempt order against trust for failure to pay pursuant to judgments." *Wehmeier v. UNR Industries, Inc.*, Ill.App. 4 Dist.1990, 574 N.E2d 1, 158 Ill.Dec. 207, 213 Ill.App.3d 1095.

This clearly satisfies 28 U.S.C. §1257 and poses the Federal questions pursuant to Supreme Court Rule 10, *Grovey - v - Townsend*, 295 U.S. 45, 55 S.. CT. 622, 79 L.Ed. 1292 (1935). Further, this Court clearly has the authority to rule on this Writ of Certiorari, pursuant to 28 U.S.C. §2106.

3. THIS WRIT OF CERTIORARI MUST BE GRANTED TO DETER AND PREVENT FURTHER ATTEMPTS TO CIRCUMVENT BANKRUPTCY LAWS IN UNLAWFUL DEBT COLLECTION.

Clearly the Bank in the present has gone far beyond lawful means in their attempt to collect "other discharged debts" (B. 4b-10b) in addition to their

mortgage debt (B. 1b). The state court has no authority to grant judgement in violation of Federal Bankruptcy Law,

> "No court, state or federal, may serve as an accomplice in the willful transgression of federal laws by which judges in every state are bound." *Lee v. State of Fla.*, Fla.1968, 88 S.Ct. 2096, 392 U.S. 378, 20 L.Ed.2d 1166.

where that very bankruptcy law VOIDS any judgement granted in violation thereof.

> "State courts are bound equally with the federal courts by the federal Constitution and laws." *Public Service Commission of Utah v. Wycoff Co.*, Utah 1952, 73 S.Ct. 236, 344 U.S. 237, 97 L.Ed. 291.

> "United States Supreme Court decisions construing and applying Federal Bankruptcy Act, 11 U.S.C.A. § 1 et seq., are binding on Georgia Supreme Court as precedents." *Morris Plan Bank of Ga. v. Simmons*, 1946, 39 S.E.2d 166, 201 Ga. 157.

CONCLUSION

It is clear that not only did the respondent take calculated measures to conceal their attempts to collect discharged debts in violation to federal law, now the respondent is attempting to cloud the issues properly raised in this Petition for Writ of Certiorari by setting forth meaningless issues that are not germane to federal questions rising from the state courts below. Clearly the respondent is attempting to cover up their unlawful actions, and side step the error of the trial court exceeding it's jurisdiction, and the appellant court's error in affirming the trial court's judgement.

Respectively, Petitioner Huff urges this Honcrable Court to Grant this Petition for Writ of Certiorari.

Respectfully submitted,

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Dated: April 9, 1997